

1 There are recipients designated on this document, more than
2 just Mr. Nourain -- Mr. Price on this document and on the
3 Lehmkuhl February 24th memo. And if Liberty were directed
4 to search the files of the designated recipients to
5 determine whether copies are in their files, it would help
6 examination significantly next week.

7 That was a very simple request and if it had been
8 done, he could have confirmed it to me as I had requested.
9 But that was refused.

10 JUDGE SIPPEL: Well, there is a motion pending.
11 They're going to have a chance to get the four day
12 turnaround time to file an opposition to that. Is that
13 right?

14 MR. SPITZER: Is it four business days or four
15 calendar?

16 JUDGE SIPPEL: Well, it was done by mail. Did you
17 get the answer --

18 MR. BEGLEITER: It was done by fax last night.

19 JUDGE SIPPEL: Well, faxes don't count for hand
20 delivery. So you've got -- add three days on to it.

21 MR. BEGLEITER: So we have until the middle of the
22 week after next. Your Honor, if there's an issue about
23 whether or not Mr. Nourain actually saw the document,
24 there's going to be -- in Mr. Holt's mind, if that's what
25 you're after, that somehow he's going to deny that he saw it

1 -- is that your question?

2 MR. HOLT: What I -- what I'm interested in
3 knowing is -- is a) who received the document --

4 JUDGE SIPPEL: Sure.

5 MR. HOLT: -- when the document was received --

6 JUDGE SIPPEL: Sure.

7 MR. HOLT: -- what happened to the document after
8 it was received; whether there are any markings on the
9 documents that reflect that mental, you know, impressions
10 were taken or that document was considered -- I mean, all of
11 these things are highly relevant to the examination that
12 we're going to conduct next week.

13 JUDGE SIPPEL: Well, yes. I think you're getting
14 ahead of yourself on this, Mr. Holt. But believe me, I --
15 I'm going to give you and Mr. Beckner -- I mean, I want one
16 of you to decide who is going to do it. I don't want to be
17 double-teaming the witness. But you're going to have full
18 latitude to explore all the facts, circumstances,
19 knowledges, inferences, whatever about that document with
20 respect to any witness that comes next week. So --

21 MR. HOLT: But beyond the question of the
22 production mechanics, Your Honor, I still would suggest it
23 would be extremely helpful if a targeted search were
24 conducted prior to the start of the examination so that we
25 had the benefit of whatever documents are in the Liberty

1 files on those -- you know, those two memos. I mean, there
2 may be notations on copies that would help us in the
3 examination. And it's going to hinder our ability to get to
4 the truth of the matter if those documents are not produced
5 until after the examination.

6 JUDGE SIPPEL: I'm not -- I'm not going -- I'm not
7 going to order any super-searches until I read what the
8 opposition says to the motion. And, you know, you've
9 elected to put this in the context of a -- of a specific
10 motion looking for specific relief. And the rules say that
11 they have a chance to respond to that. And I can look at
12 the situation and we can decide. But I can -- I can -- I
13 can tell you again, I mean, it goes without saying -- maybe
14 it doesn't in light of getting this document -- let me be
15 sure that the record is clear what document we're referring
16 to.

17 This is a -- it hasn't been marked yet, but it
18 will be marked. And this is a copy of a memorandum to Mr.
19 Nourain and Mr. Price from Mr. Lehmkuhl entitled, "Status of
20 New and Pending Applications." And it's dated April 28th,
21 1995. And it appears to be coming from the files of Pepper
22 & Corazzini. And it was not turned over until -- am I
23 right? -- Monday, January 6th. That's the date it was
24 turned over?

25 MR. SPITZER: That's correct.

1 JUDGE SIPPEL: And I just received a copy of it in
2 my fax machine late yesterday. If there's -- this -- if
3 there's -- see, the -- there's an obligation on the part of
4 anybody at Liberty, any agent of Liberty, any counsel of
5 Liberty to immediately turn over information such as this
6 once it's discovered. I have no reason here to believe that
7 that wasn't done.

8 Why it wasn't done is a different question. And I
9 don't want to say anything to discourage any further
10 documents from -- that are unearthed to be turned over. But
11 I think it goes without saying that coming in with
12 significantly relevant documents that did not come in six
13 months ago when they should have come in doesn't help
14 Liberty's situation. That's about as much as I'm going to
15 say right now.

16 MR. SPITZER: Your Honor --

17 JUDGE SIPPEL: And you've got to -- you've got the
18 opportunity and do what you will with the witnesses that
19 come in next week; obviously the ones -- particularly the
20 ones who are identified as being recipients or that should
21 have been recipients of the document.

22 MR. SPITZER: Your Honor, if I could respond just
23 briefly. First, we, as counsel for Liberty, obviously
24 appreciate the gravity of the obligation to comply in
25 entirety with discovery requests. We have made every effort

1 to do so. We first received discovery requests back at the
2 end of April of last year. And within a number of weeks, we
3 had produced 15,000 documents.

4 Time Warner and Cablevision are focusing on two
5 documents which were produced late, one of them produced
6 last June which upon our discovery we produced, and one of
7 them -- and this is the more significant one -- which we
8 first found out about and our agent as we understand it
9 first found out about either Monday of this week or perhaps
10 late Friday. Within minutes, an hour at most of our
11 receiving that document, it was disseminated by fax to all
12 counsel so that it should be perfectly clear that we have
13 been absolutely meticulous in our effort to comply and
14 comply fully.

15 And we understood that this was late; it would be
16 perceived as highly relevant. We believe substantively it
17 corroborates the perspective that our witnesses have
18 testified to that that is a secondary issue because
19 regardless of which way it cuts in terms of the evidence,
20 there was an obligation to produce it. We understood that.

21 We have acted firmly with those who are
22 responsible to initially perform the search to ensure that
23 there are no other documents. And we will report that to
24 you in the responsive papers. And I just hope the Court
25 understands that we absolutely -- we were I imagine more

1 disturbed than opposing counsel. For them, this was a
2 wonderful opportunity to take advantage of a situation in
3 litigation. For us since we have a burden to carry in this
4 courtroom, this was a horrible misstep. We fully appreciate
5 that.

6 JUDGE SIPPEL: All right. Well, I hear you. I
7 certainly wouldn't want to be in the situation of finding a
8 document on the eve of a hearing. But on the other hand,
9 here it is. And it's going to present -- it's going --
10 there's going to be some serious questioning that's going to
11 be done on it. And as I said before, you've got -- there's
12 a motion that's been filed. There's going to be a response
13 to the motion. I -- that's a -- that's a different issue
14 for a different day.

15 Right now it's the evidence that we all have to
16 deal with. And this is a piece of evidence that you all and
17 I've got to deal with. And we're going to have witnesses
18 here who are least in a position to address it. And you're
19 going to get the benefit of Mr. Lehmkuhl's -- probably
20 Lehmkuhl will be selected -- or Mr. Barr are going to give
21 you an explanation before Mr. Lehmkuhl hits the stand. So I
22 think we're making the best use of their time.

23 MR. WEBER: Your Honor, would you like the Bureau
24 also to submit its comments on Time Warner's motion?
25 Whereas even though we join Liberty with the motion for

1 summary decision, our feelings on the late filing of this
2 document most likely will be different than Liberty's.

3 JUDGE SIPPEL: Sure. Yes, thank you, Mr. Weber.
4 Thank you very much. Yes. That would be -- I think that
5 would be not only appropriate, most helpful to me. I -- I
6 am trying as hard as I can to get this record in a position
7 where a decision can be made. And -- but we're not going to
8 -- well, I just said up front how I feel about this. Does
9 that then -- that does conclude Liberty's documentary case.
10 And now for Time Warner and Cablevision, who wants to
11 proceed with this? Mr. Beckner or Mr. Holt?

12 MR. BECKNER: Your Honor, before we leave that,
13 speaking only for Time Warner, if -- if counsel wants a few
14 more days to do their response because they're in the
15 hearing, I have no objection if you want to give them a few
16 more days to respond to the motion. It was not my intent in
17 the motion to put anybody out. It's just that it was a
18 matter that I thought had to be raised right away. And I
19 realize that they're busy with the hearing. So if they want
20 a couple of extra days to respond to it, it's okay with me.

21 JUDGE SIPPEL: Well, all right. Well, do you want
22 to set a date? Why don't we set a date certain and so
23 everybody knows what -- how much time do you need to do
24 this, Mr. Begleiter?

25 MR. BEGLEITER: I would suggest that we have at

1 least four business days after the -- after the hearing is
2 over because we're not going to really turn to it.
3 Obviously, we'll be somewhere else or otherwise engaged.

4 JUDGE SIPPEL: And there is a --

5 MR. BEGLEITER: Holiday.

6 JUDGE SIPPEL: -- and there's a holiday in there,
7 too. How about on the 24th?

8 MR. BEGLEITER: Well, but that's assuming that the
9 hearing is over next Tuesday.

10 JUDGE SIPPEL: Well, if -- you know, if --
11 obviously if we're back in here on the 21st for hearing
12 purposes, we'll -- you know, we'll -- we can move it back.
13 We can give you more time. But why don't I set it down for
14 the 24th now. And if there's any change, you know, you all
15 let me know. Okay?

16 24th -- I'll tell you, why don't we do this.
17 Let's do it the 27th. I mean, a Friday is -- if you -- if
18 you style it on the end of the business -- at the end of the
19 day on Friday as opposed to coming in with it on Monday, it
20 doesn't make a heck of a lot of difference. So -- but I
21 want to see a copy of it by the -- by 12:00 noon on the
22 27th. You can file by the end of the day, but I want to see
23 a copy of it by 12:00 noon.

24 MR. BECKNER: Your Honor, could we be served by
25 fax at the same time as you get your copy?

1 JUDGE SIPPEL: Yes, yes.

2 MR. BECKNER: Thank you.

3 JUDGE SIPPEL: I thank you. Yes, yes. I didn't
4 mean to say that I'm the only one that gets the copy. And
5 it can be given to me by fax, too.

6 MR. HOLT: And, Your Honor, you're speaking only
7 to the opposition papers, correct? Not --

8 JUDGE SIPPEL: The opposition papers to the
9 motion. What else would there be?

10 MR. HOLT: Well, I just wanted to clarify that you
11 weren't talking about the Lehmkuhl declarations that you
12 wanted on Monday.

13 JUDGE SIPPEL: That's right. That is -- that is
14 Monday, the 13th. So that's absolutely clear. Yes, sir,
15 MR. Weber?

16 MR. WEBER: Will we be given latitude to question
17 the witnesses over the late filing of this document, as
18 well?

19 JUDGE SIPPEL: Oh, yes. You mean the Lehmkuhl --

20 MR. WEBER: Yes, the -- the -- right, the April
21 8 -- or the April 28th memo.

22 JUDGE SIPPEL: You mean you, the Bureau?

23 MR. WEBER: Yes.

24 JUDGE SIPPEL: Well, what does Liberty have to --
25 what would Liberty's position be?

1 MR. BEGLEITER: In our view, it's a motion made
2 only by Mr. Holt and Mr. -- and Mr. Beckner. But if we're
3 not going -- we're not going to stop the Bureau from asking
4 questions. And I don't know why, but --

5 MR. WEBER: It's in part because the initial
6 document request did come from the Bureau. We do believe
7 this is responsible to our initial document request, and we
8 want to know why it came ten months after our document
9 request.

10 JUDGE SIPPEL: All right. That's clear enough.
11 Yes. The answer to your question then is yes.

12 MR. WEBER: Thank you.

13 JUDGE SIPPEL: You can fully participate from your
14 side of the table on that particular issue. But you -- but
15 the -- it's going to be Time Warner's -- well, let's -- you
16 all can agree to that. Now, I was going to say, it's --
17 Time Warner gets first crack at this with the witness. And
18 this could be done -- I mean, the document. This could be
19 done as a matter of voir dire when the witness first comes
20 to the stand. You know, you all let me know and let counsel
21 know how you want to proceed with that. Whether you want to
22 go or Mr. Weber wants to go first, you all --

23 MR. BECKNER: Just on the voir dire, with respect
24 to this April 28th memo?

25 JUDGE SIPPEL: Yes.

1 MR. BECKNER: Well, we'll confer with Mr. Weber
2 and his colleagues on that.

3 JUDGE SIPPEL: All right. Because you -- you may
4 want to do this. In fact, I may want to see it done this
5 way. I may want to see a voir dire done, say, of Mr.
6 Nourain about this document before he takes the stand. And
7 then you could also come back and cross examine him on it
8 after he gives his full testimony.

9 But I really want to know what he knows. I say
10 voir dire. I mean, how did this document -- well, we'll
11 know more when we get Mr. Lehmkuhl's affidavit. I mean, I'm
12 speculating here. But when I -- when a witness is going to
13 testify about something like this, I'd like to know up front
14 why he's -- why he doesn't know about this; why he didn't
15 know about this a long time ago. We'll take it -- we'll
16 just take it one step at a --

17 MR. BECKNER: Can we voir dire Mr. Lehmkuhl on
18 this, as well, or just Mr. Nourain?

19 JUDGE SIPPEL: No. You're going to have Mr.
20 Lehmkuhl -- you're going to have him to pin down. I mean,
21 you're going to have his affidavit.

22 MR. BECKNER: Okay. Fine.

23 JUDGE SIPPEL: All right. But you're going to --
24 anyway, yes, you and Mr. Weber work this out however you
25 want to proceed.

1 MR. BECKNER: Sure.

2 JUDGE SIPPEL: Okay? And just let us know when we
3 open the record so that I know what's going on and of course
4 let each counsel know --

5 MR. BECKNER: Sure.

6 JUDGE SIPPEL: -- just how you're going to
7 proceed.

8 MR. BECKNER: All right. Thank you.

9 JUDGE SIPPEL: Okay. Then you're up then, Mr.
10 Beckner or Mr. Holt.

11 MR. BECKNER: Your Honor, I have to confess.
12 Somehow we didn't make enough copies of these things.

13 JUDGE SIPPEL: Your exhibits?

14 MR. BECKNER: Yes, sir. And I have -- I have one
15 set of copies here and I should have had two, so one to give
16 the Reporter and one to keep for myself.

17 JUDGE SIPPEL: Well, I'll tell you, you know what
18 you can do. Let's go off the record a minute.

19 (A discussion was held off the record.)

20 JUDGE SIPPEL: The time is 11:20 by this clock in
21 the back of the room. We're going to come back -- we're
22 going to recess to permit Mr. Beckner to reorganize his
23 exhibits. And everybody will take a break. And we'll come
24 back at 11:35 by that clock. We're in recess. Thank you.

25 (Whereupon, a brief recess was taken.)

1 JUDGE SIPPEL: Back on the record. I want to -- I
2 want to make two modifications to what I had prescribed
3 earlier this morning. One, and Mr. Weber you were dead
4 right. To be absolutely sure that nothing gets astray here,
5 what we'll do is we'll have the witness testify from the
6 second set of marked exhibits that the Reporter can make
7 available and that can be made available next week.

8 The Reporter is going to have two sets here. One
9 of those sets can be put before -- right up on the witness
10 table and can be left there for the duration of the day
11 while anybody's testifying so that -- and then that way,
12 there will be absolutely no question in the record in terms
13 of what's being -- what document is being -- question is
14 being asked and where the answers are coming from. And
15 that's a good point.

16 The second procedural ruling, I want to tighten up
17 a little bit about this -- the Bureau's participation with
18 respect to the late production of the document. I -- I --
19 you should really proceed with the voir dire. You're going
20 to voir dire the witness. That would certainly be Mr.
21 Nourain and I take it Mr. Price.

22 There's no need -- as we said earlier this
23 morning, there's no need to voir dire Mr. Lehmkuhl because
24 you're going to have the benefit of the voir dire from his
25 affidavit and Mr. Milstein. So there's really no indication

1 that Mr. Milstein knows anything about this or who -- or
2 anything about this. But I would have no objection to --
3 just to clarifying that on the record with Mr. Milstein,
4 also.

5 But the point is the procedure would be that you
6 would proceed first with the voir dire to get your questions
7 answered with respect to the location and delivery and
8 finding of the document, et cetera. And then that way, you
9 won't be participating in the cross examination which goes
10 to the -- which will go of course to attacking the
11 credibility of the witness that's being offered in support
12 of the motion.

13 MR. WEBER: Well, may -- and then I want to I
14 guess inquire further on that. If you recall, the Bureau
15 did have some questions about credibility of some of these
16 witnesses; nothing to degree which in any way made us waver
17 on our stance on the motion for summary decision. However,
18 because we did have some questions, I would like to inquire
19 whether or not we will have the right to also examine
20 witnesses on their credibility.

21 JUDGE SIPPEL: Certainly. You can make -- I would
22 -- what I would require you to do, however, is to ask for
23 leave to conduct that cross examination and indicate exactly
24 in what areas you want to do it. But the -- and it's not
25 because I have any question about your -- you ability or

1 interest in examining the witness. It's just that you're --
2 you're a joint motion; you're a joint movement.

3 MR. WEBER: Right.

4 JUDGE SIPPEL: And these are witnesses that are
5 being offered by the -- by the joint movement in support the
6 relief that's being asked. So I think that it should be
7 very careful in terms of how you're proceeding. That's all.
8 But as long as the record is clear, yes, I would permit
9 that. Those are the only two things that I have. Mr.
10 Beckner?

11 MR. BECKNER: All right, sir. I'm -- I'm kind of
12 in a quandary about these exhibits in a sense that a number
13 of them are exhibits that I think I might use in cross
14 examining the witness. And I'm not sure I'm going to use
15 them. But because I thought I might use them, I felt that I
16 was obligated to, of course, produce them as an exhibit
17 list. But I don't know frankly that it's fair that either
18 or Mr. Holt be required to -- today to disclose our cross
19 examination of -- of Liberty's witnesses by explaining what
20 it is we're going to do with a particular exhibit.

21 So what I'd like to suggest if I might is that --
22 is that all the exhibits be marked for identification.
23 There are some of them that -- they'll all be marked for
24 identification and either Liberty will indicate which ones
25 they have a relevance objection to -- and there may be some

1 that they don't object to. And then at the hearing, you
2 know, we'll either offer that and answer that objection or
3 not offer the exhibit. Or we can break the exhibits into
4 two groups because some of the exhibits I'm quite confident
5 I will definitely use.

6 And I think I can justify those exhibits used
7 without giving away anything about how I might cross examine
8 the witness. For example, among the exhibits here are the
9 May 4th, 1995 request for special temporary authority that
10 were filed by Liberty and the July 17, 1995 license
11 applications that were filed by Liberty, as well as the July
12 24th, 1995 request for STA to the extent that we could get
13 them that were filed by Liberty.

14 And those documents, you know, obviously the --
15 the problem with all those filings is -- is that they --
16 none of them disclose the fact that the paths that they're
17 seeking to have licensed or for which they're seeking
18 temporary authority were already operational. And we're --
19 you know, that -- and that's admitted. And the question is,
20 you know, how was it that -- that these documents were filed
21 with the Commission that were materially incorrect. And
22 that's -- you know, that's within the HDO.

23 So I -- I mean, if you want me just to go ahead
24 and sort of start at the top and go through with you, I'll
25 be glad to do that.

1 MR. BEGLEITER: To all of the exhibits, we have
2 very few objections.

3 JUDGE SIPPEL: Let's -- I think then that, again,
4 the -- what I'm trying to accomplish here today among other
5 things -- but what I'm trying to accomplish here today is to
6 get as much of this mechanical business taken care of so
7 that the witness doesn't have to sit there while we're doing
8 this and he's on the -- he or she is on the stand.

9 MR. BECKNER: Well, I think we can do that. I
10 think we can do 95 percent of it.

11 JUDGE SIPPEL: All right. Well, I'll let you take
12 the lead on it then. Let me just ask two questions up front
13 though. First of all, you're going to have marked for
14 identification only -- nothing that's duplicative of what
15 came in on Liberty's side, is that right?

16 MR. BECKNER: That's correct. We -- in the break,
17 we pulled out from our exhibit pile all of the things that
18 Liberty has -- has already offered and that's been accepted
19 by the presiding judge.

20 JUDGE SIPPEL: All right. If you're going to have
21 just something marked for identification -- and then you
22 would wait to offer it into evidence when you're actually
23 examining the witness? Is that what you had in mind or some
24 of these?

25 MR. BECKNER: Yes. Or perhaps -- as I say,

1 perhaps when it's marked -- I mean, I don't know whether Mr.
2 Begleiter is prepared to do so, but when it's marked, he
3 might say we don't have any objection to that one. And then
4 --

5 JUDGE SIPPEL: Well, that's what he's -- he's
6 already indicated that.

7 MR. BECKNER: So in that event, we can just take
8 care of it today.

9 JUDGE SIPPEL: Well, that's what we're trying to
10 do. I mean, if there's a problem -- that's always the --
11 that's always the fall back on this procedure. I've done --
12 we do these quite a bit in these bigger cases because if you
13 can't get it cleared up at a session like this, then it just
14 is going to have to wait until the witness comes. Sometimes
15 that happens. But that's not -- all right, let's -- let's
16 take these one at a time though so that the record is clear
17 as to what we're identifying and what we're receiving. What
18 is going to be your first -- what is going to be -- what are
19 we going to call this? Can we call this Time Warner
20 exhibits or TWC/NYC or how do you want to do this?

21 MR. BECKNER: Well, we have Cablevision in here,
22 too.

23 MR. HOLT: I think I'd like to have Cablevision
24 represented as a sponsor of the exhibits. So maybe, you
25 know, TW/CV, Time Warner/Cablevision -- TW/CV 1, TW/CV 2.

1 JUDGE SIPPEL: TW/Charlie Victor.

2 MR. HOLT: Correct.

3 MR. BECKNER: Yes.

4 JUDGE SIPPEL: How's that? The Reporter have
5 that? Do you understand that, Mr. Reporter?

6 THE COURT REPORTER: Yes, sir. Yes.

7 JUDGE SIPPEL: All right. Then that's what
8 they're going to be called when we go down this list now.
9 So what is TW/CV Number 1? Which one is that going to be?

10 MR. BECKNER: All right. That -- that is the
11 deposition transcript of Anthony Ontiveros from May 21,
12 1996. It's the complete so-called minuscrit transcript
13 which we had previously marked as 4 just from the standpoint
14 of these purposes.

15 JUDGE SIPPEL: All right. Let's not use that
16 number again.

17 MR. BECKNER: Yes.

18 JUDGE SIPPEL: But I see exactly what you're
19 doing. Okay. Then we will mark for identification as TW/CV
20 Number 1 the transcript of the deposition of Anthony
21 Ontiveros of May 21, 1996. The Reporter will identify that
22 document.

23 (The document referred to was
24 marked for identification as
25 TW/CV Exhibit Number 1.)

1 Now, is there any objection to it being received
2 in evidence?

3 MR. BEGLEITER: As long as -- Your Honor, as long
4 as there's no waiver construed on our part for objecting to
5 Mr. Ontiveros being a witness, we have no objection.

6 JUDGE SIPPEL: Yes, that's a good point. It's
7 identified on this date. And it will be -- it will be
8 received as -- at this point, it will be received as a
9 proffer. It will not be received as evidence. It will be
10 received as a proffer in the event that I determine that we
11 won't here Mr. Ontiveros. Okay?

12 MR. BECKNER: That's fine, Your Honor.

13 JUDGE SIPPEL: I mean, is that understood?

14 MR. BECKNER: Yes.

15 JUDGE SIPPEL: So I'm not rejecting it, but
16 technically it's not received in evidence. It is only noted
17 as a proffer subject to being tied up with some direct
18 testimony. Okay.

19 (The document referred to,
20 previously marked for
21 identification as TW/CV
22 Exhibit Number 1, was received
23 as a proffer.)

24 MR. BECKNER: All right. Our second --

25 JUDGE SIPPEL: This will be -- you're talking

1 about now what will be marked as TW/CV Number 2?

2 MR. BECKNER: Right, TW/CV Number 2 is a cross
3 examination exhibit. And it's -- it was formerly identified
4 by us as Number 7 in the --

5 JUDGE SIPPEL: Okay.

6 MR. BECKNER: It's a two page memo from Joseph
7 Stern (phonetic) to Behrooz Nourain. And it was
8 authenticated in Mr. Stern's (phonetic) deposition. But, as
9 I say, it's a cross examination exhibit. And I prefer at
10 this time not to explain in detail what I propose to do with
11 it.

12 JUDGE SIPPEL: That's all right. Well, I want to
13 ask Mr. Begleiter if he's going to have any objection.
14 That's going to take care of a lot of these things.

15 MR. BEGLEITER: No objection, Your Honor.

16 JUDGE SIPPEL: No objection? Then we don't have
17 to go any further with it. Let me make sure I've got the --
18 this is the -- this document is dated April the 29th, 1992?

19 MR. BEGLEITER: Yes.

20 MR. BECKNER: It's Tab 7, Your Honor.

21 JUDGE SIPPEL: All right. All right. Then what
22 we're going to do is mark that document at this time as
23 TW/CV Number 2 for identification and it will also be
24 received into evidence there being no objection as TW/CV
25 Number 2.

1 (The document referred to was
2 marked for identification as
3 TW/CV Exhibit Number 2 and was
4 received in evidence.)

5 And as I say, you're saying that -- you know, that
6 it's being offered as a cross examination exhibit. But, as
7 I said before, once it comes into the record, it's evidence
8 in the case. It can be used for any purpose.

9 MR. BECKNER: I understand.

10 JUDGE SIPPEL: Okay. What's your next document?

11 MR. BECKNER: Okay. And this would be TW/CV
12 Exhibit Number 3. And it is -- it is my Tab Number 8. It's
13 the inventory of 18 gigahertz authorizations prepared by
14 Jennifer Richter and dated April 6, 1993.

15 JUDGE SIPPEL: Do you know how many pages that
16 document is?

17 MR. BECKNER: And that is 256 to -- hold on.

18 MR. HOLT: I believe it's 23, Your Honor.

19 JUDGE SIPPEL: All right. That document will be
20 marked for identification then as TW/CV Number 3.

21 (The document referred to was
22 marked for identification as
23 TW/CV Exhibit Number 3.)

24 Is there any objection to it being received?

25 MR. BEGLEITER: There is none, Your Honor.

1 JUDGE SIPPEL: Then it's now received into
2 evidence as TW/CV Number 3.

3 (The document referred to,
4 previously marked for
5 identification as TW/CV
6 Exhibit Number 3, was received
7 in evidence.)

8 MR. BECKNER: Okay. All right, number -- Exhibit
9 4 was our Tab 9. And it also is an inventory of 18
10 gigahertz licenses from Jennifer Richter. And this one's
11 dated December 1 of 1993. And it has 28 pages?

12 MR. HOLT: I believe it's 28 pages.

13 MR. BECKNER: Yes. It's 28 pages.

14 JUDGE SIPPEL: So that document is marked for
15 identification at this time as TW/CV Number 4.

16 (The document referred to was
17 marked for identification as
18 TW/CV Exhibit Number 4.)

19 Is there any objection to it being received in
20 evidence?

21 MR. BEGLEITER: There is none, Your Honor.

22 JUDGE SIPPEL: It's received in evidence at this
23 time, and it's TW/CV Number 4.

24 //

25 //

1 (The document referred to,
2 previously marked for
3 identification as TW/CV
4 Exhibit Number 4, was received
5 in evidence.)

6 The next document.

7 MR. BECKNER: Okay. Number 5 is at Tab 10 in the
8 notebook. And it's a one page document, a memo from Behrooz
9 Nourain to Bertina Ceccarelli dated January 5, 1994. And it
10 has production number 886 on it. This is what I would call
11 a cross examination document that we may or may not use.

12 JUDGE SIPPEL: All right. That will be marked for
13 identification as TW/CV Number 5.

14 (The document referred to was
15 marked for identification as
16 TW/CV Exhibit Number 5.)

17 Any objection?

18 MR. BEGLEITER: Yes, there is, Your Honor. We
19 don't see the relevance of this document.

20 JUDGE SIPPEL: All right.

21 MR. BECKNER: Well, Your Honor, I'd like to make
22 the showing of relevance at the time that I'm cross
23 examining a witness if that's all right.

24 JUDGE SIPPEL: All right. For the time being,
25 then it's rejected. And I'll make a notation that you can

1 re-offer it when the witness is on the stand.

2 (The document referred to,
3 previously marked for
4 identification as TW/CV
5 Exhibit Number 5, was
6 rejected.)

7 MR. BECKNER: Okay. So we're not going to have
8 the Reporter mark this one even for identification?

9 JUDGE SIPPEL: Yes. I marked it for
10 identification, but it's not received.

11 MR. BECKNER: I understand.

12 JUDGE SIPPEL: It's rejected at this time with the
13 right to renew. Mr. Holt?

14 MR. HOLT: I just wanted to clarify I guess. I'm
15 not even sure why it was offered as evidence at this
16 juncture. It's simply been marked for identification.
17 But --

18 JUDGE SIPPEL: Well, yes, it was offered. It was
19 offered but he didn't want to argue the point because -- and
20 then --

21 MR. HOLT: Okay.

22 JUDGE SIPPEL: -- withdrawn it.

23 MR. HOLT: I understand it.

24 JUDGE SIPPEL: I'm just -- all I'm trying to do is
25 be sure that the transcript doesn't -- is -- is clear on